* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **WRIT PETITION (*CRIMINAL) NO. 950 OF 2006***

Reserved on : August 02, 2006

% Date of Decision: August 11th, 2006

Arjun Singh ..... Appellant
Through Mr. Arun Bhardwaj Advocate,
with Mr. S.K. Sahijpal and
Mr. Karunesh Tandon, Advs.

versus

$ State & Ors. ..... Respondents
Through Ms. Mukta Gupta, Adv. With
Mr. Rajat Katyal, Advocate.

CORAM:

* **HON'BLE MR.JUSTICE R.S.SODHI**
HON'BLE MR.JUSTICE P.K.BHASIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the digest? Yes

J U D G M E N T

***R.S.SODHI, J*:**

1. Writ Petition (Criminal) No. 950 of 2006 has been filed with the prayer for quashing/setting aside detention order No. F/5/7/2005-Home (P-II) dated 12.1.2006 passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short 'the COFEPOSA Act').

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2. Brief facts of the case, as stated by the petitioner in the writ petition, are as under :

> "That brief facts of the case are that on 29.7.2005, the petitioner came on is usual trip to Delhi to visit his children in Delhi and also to finalise one property deal during his stay. The petitioner is frequent flier to Delhi and flies between Dubai and Delhi every week or at least once in a fortnight. The petitioner was carrying with himself foreign currencies equivalent to Indian Rs.86,87,142/- which included Saudi riyals, American Dollars, Pounds, dirham etc. to purchase a property.
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> That on 30.7.05, when the petitioner was returning to Dubai he was arrested by Custom officials where he was physically beaten up and mentally tortured and was made to write as per the dictates of the Custom officials.
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> That the residence, farm house and offices of sons of the petitioner were raided by the customs officials on the same date but nothing incriminating was discovered.
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> That the alleged voluntary statement before the independent Customs Supdt. Mr. G.P.Singh u/s 108 of the Customs Act, was nothing more than imagination of his own mind that he got written by the petitioner from which the petitioner retracted on the first possible opportunity. It is pertinent to mention herein that Shri G.P.Singh was not an independent officer as is evident from the documents supplied.
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> That in the alleged voluntary statement, it has been mentioned that petitioner was carrying aforesaid foreign currencies for one Mr.Girdhari Lal for a consideration of Rs.60,000/-. Even though fact is that the petitioner had informed the Custom officials that the petitioner had withdrawn money in Dubai from his bank viz., Habib Bank AJ, Zurich from the account of M/s Daljeet Textiles LLC, copy of the same is annexed herewith and marked as Annexure A and thereafter, the petitioner had covered Dirhams into currency of US Dollars, Saudi Rials, Euros and GB Pound from M/s Orient Exchange Company LLC, PB

No.376, Dubai, copy of the same is annexed herewith and marked as Annexure-B.

That petitioner was released on bail on 5.9.2005. Thereafter, with the permission of the Court, the petitioner went to Dubai vide order dated 18.10.2005 to look after his business and returned to Delhi.

That the petitioner was again arrested by the Customs Officials on 17.1.06 from his residence at S-285, Greater Kailash-II, New Delhi and was lodged in Central Jail, Tihar, New Delhi, that is when petitioner learnt that Detention order No.F/5/7/2005-Home(P-II) dated 12.1.06 has been issued against him by the Deputy Secretary, Home, Government of NCT Delhi under Section 3(1) of the COFEPOSA Act, 1974 for the same alleged offence for which the petitioner was already facing a trial. Since then, the petitioner is under detention at Tihar Jai. Copy of the same is annexed herewith and marked as Annexure-C.

That on 9.3.2006 the petitioner made a representation to the Advisory Board at High Court of Delhi but no order has been passed by the Advisory Board till date. Copy of the representation is annexed herewith and marked as Annexure-D.

3. Aggrieved of the order dated 12.1.2006 passed under Section 3(1) of the COFEPOSA Act, the petitioner has approached this Court by way of the present writ petition.

4. The only ground raised by the petitioner before us is that the detaining authority has taken considerable time in issuance of detention order which would go to show that there was no necessity or urgency to detain the detenu to prevent him from smuggling goods in future. Counsel contended that the petitioner was first arrested on 30.7.2005 and the proposal to detain the detenu under the COFEPOSA Act was received in the Home Department on

22.9.2005 which is more than two months of the date of the incident. It is not till 12.1.2006 that the detention order has been passed. The delay in passing the detention order is fatal and sufficient to quash the detention order.

5. In the counter-affidavit filed on behalf of the detaining authority it is denied that there is unexplained delay and the details of sequence of events had been set out. To understand the explanation given, it would be appropriate to extract paragraph 13(viii) of the counter-affidavit which reads as under :

> "Contents of ground 13(viii) are wrong and denied. It is denied that there is unexplained delay in passing of the detention order against the petitioner under COFEPOSA Act, 1974.
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> The details of the sequences of events with date leading to the passing of the detention order are as under:-
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Date	***Event***
30.7.2005	Date of incident.
22.9.2005	Proposal received in the Home Department.
27.9.2005	Meeting of COFEPOSA Screening Committee held.
29.9.2005	Letter sent by fax to the Customs Department for furnishing some documents/information.

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Date	Event
10.10.2005	Some documents received from the Customs Department in response to letter dated 29.9.2005
13.10.2005	Customs Department sent an application filed by Shri Arjun Singh in the Court of ACMM, New Delhi seeking permission to go abroad by fax.
19.10.2005	Letter sent by fax to the Customs Department for furnishing the legible copies of the document sent by fax vide their letter dated 13.10.2005 and remaining documents asked for vide this office letter dated 29.9.2005.
24.10.2005	The Customs Department furnished some further generated documents.
28.10.2005	Letter sent through fax to Customs Department for furnishing the documents asked for vide letter 29.9.2005 and 19.10.2005
08.11.2005	The Customs Department furnished some documents asked for vide letter dated 29.9.2005 and 19.10.2005 and also furnished some further generated documents.
11.11.2005	Reminder letter sent to the Customs department for furnishing the remaining documents.
05.12.2005	D.O. reminder sent to the Customs department for furnishing the remaining documents.
14.12.2005	The customs Department sent some documents including generated documents.
20.12.2005	Letter sent to the Customs Department for furnishing remaining documents.

Date	Event
21.12.2005	The Customs Department furnished some documents, however, stated that some documents will be sent on being receipt from the Court.
23.12.2005	Reminder sent to the Customs Department for furnishing remaining documents.
29.12.2005	Customs Department furnished the complete documents.
06.01.2006	The file was processed and put up for the consideration of the Detaining Authority through proper channel.
10.01.2006	The detaining authority passed the detention order.
12.1.2006	Formal detention order issued.
17.01.2006	Detained.

6. In paragraph 13(viii) it is stated by the detaining authority that - "contents of Ground 13(viii) are wrong and denied. It is denied that there is unexplained delay in passing of the detention order against the petitioner under COFEPOSA Act, 1974".

7. Counsel for the respondent submitted that the process of gathering material from the Customs Department took time and that there was no delay on the part of the detaining authority in processing the case sponsored by the Customs Department. Counsel submitted that the

explanation rendered would show that the Home Department had been diligently pursuing the matter and were anxious to formalize the proceedings expeditiously.

8. We have heard counsel for the parties and carefully gone through the counter-affidavit placed on record. From the above explanation it is evident that the proposal received on 22.9.2005 was incomplete which necessitated further material from the Customs Department. On 29.9.2005 documents and information were sought from the Customs Department. On 10.10.2005 some documents were received in response to letter dated 29.9.2005. On 19.10.2005 another fax was sent requiring the Customs Department to furnish legible copies and the remaining documents sought for vide letter dated 29.9.2005. On 24.10.2005 Customs Department furnished some further generated documents. On 28.10.2005 a fax was again sent to the Customs Department to furnish documents required of them vide letter dated 29.10.2005 and 19.10.2005. On 8.11.2005, some documents were furnished. A reminder was again sent on 11.11.2005. On 5.12.2005 a D.O. Letter was sent to the Customs Department which evoked a response on 14.12.2005 of some documents. On 20.12.2005, the Customs Department was required to send the remaining documents. This correspondence continued till 29.12.2005 when complete documents were furnished by the Customs Department. It is thereafter that on 10.01.2006 the detaining

authority passed the detention order which was formally delivered on 12.1.2006.

9. From the above, it can be noted that there appears to be hardly any urgency in passing of a the urgent preventive detention order to prevent the detenu from smuggling goods in future. The lackadaisic approach of the authorities, in particular response of the Customs Department to the requests by the Home Department, only goes to show that the proposal mooted by the Customs Department for the preventive detention of the detenu was not a serious one. The Supreme Court in the case of Rajinder Kumar Arora vs. Union of India, 2006 (4) SCC 796 has, in paragraph 21 thereof, held as under :

> "21. The question as regards delay in issuing the order of detention has been held to be a valid ground for quashing an order of detention by this Court in T.A. Abdu Rahman v. State of Kerala stating: (SCC pp. 748-49, paras 10-11)
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> > "10. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order to detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard-and-fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay

> between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the casual connection has been broken in the circumstances of each case.
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> 11. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining."

10. Lack of urgency is fatal to the detention order. There is no doubt that no time frame has been set, but in the facts of each case, urgency must be reflected in the working of the Department in order to prevent the continuation of the prejudicial activity sought to be prevented. In the present case, as already noted, routine letters and reminders are being sent showing no urgency in the matter of need to detain the detenu to prevent him from continuing the smuggling activities.

11. The cavalier manner of correspondence between the departments shows no urgency to arrest the activity of the detenu. The delay caused and the manner in which it is caused vitiates the detention order. The test of proximity, though not rigid, must justify the necessity of passing of the detention order in order to snap the live link between the prejudicial activity.

12. Having regard to the findings mentioned above, we are of the opinion that the impugned order of detention cannot be sustained and that the delay in passing the detention order is fatal. The detention order No. F/5/7/2005-Home (P-II) dated 12.1.2006 is, therefore, quashed. The writ petition is allowed and the Rule made absolute. The petitioner, who is in custody, be released forthwith, if not wanted in any other case. The writ petition is disposed of.

[R.S.SODHI]
JUDGE

[P.K.BHASIN]
JUDGE

August 11th ,2006
jt.